IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SIXTH DAY OF DECEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION No. 27149 of 2005

Between:

TCS Jammiched, Gadwal Mandal, Mahabubnagar District,
Rep by its President G Raman Goud

..... PETITIONER

AND

The Prohibition and Excise, Superintendent,

Gadwal, Mahaboobnagar Ditrict and another

.....RESPONDENTS

ORDER:

Seeking a Mandamus, declaring the proceedings of the 1st respondent, dated 17.12.2005 in Cr.No.D/1743/2005, as illegal and arbitrary, the present writ petition is filed.

Heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise.

The petitioner is a Toddy Tappers Cooperative Society of Jammiched, Gadwal Mandal of Mahabubnagar District. It is stated that the shop of the petitioner was inspected by the 2nd respondent on 09.07.2005 at about 3.15 P.M. and found the toddy was adulterated with Chloral Hydrate in the spot test, and accordingly samples were drawn in accordance with Rule 24 of A.P.Excise (Arrack and Toddy Licences General Conditions) Rules, 1969. Thereafter, based on the spot test itself, the license of the petitioner was suspended by order dated 14.07.2005. The samples, sent through the Court to the Chemical Examiner for Prohibition and Excise, Regional Prohibition and Excise Laboratory, Hyderabad, was tested and report dated 28.10.2005 was sent stating that the sample found adulterated with Chloral Hydrate. As against the said suspension order, the petitioner filed W.P.No.21074/2005, which was disposed of on 27.09.2005 directing to complete the enquiry in accordance with law. Thereafter, a show cause notice was issued on 30.11.2005, for which an explanation was submitted by the petitioner on 08.12.2005 disputing the alleging inspection itself in respect of the petitioner's shop stating that registering a case itself is illegal, and suspension of license, even before sending one of the samples to the Chemical Examiner is also illegal and arbitrary. The petitioner further stated that on the writ petition filed by him, this Court directed to complete the enquiry within three weeks from the date of receipt of report from the Chemical Examiner, and subsequently the enquiry was conducted by the 2nd respondent and submitted his report, stating that the President and members of the petitioner Society are not responsible for adulteration of the toddy, but A1-

Parasuramaman Goud alone was responsible for adulteration of toddy, and accordingly, the petitioner requested to drop the cancellation proceedings and permit him to do the business. The said representation/explanation dated 08.12.2005 was rejected by the

1st respondent vide proceedings in CR.No.D/1743/2005, dated 17.12.2005.

The learned counsel for the petitioner submits that under Section 31(1) of the A.P.Excise Act, 1968, there cannot be intermediary proceedings, one proceeding rejecting the application of the petitioner and another followed by the order of cancellation of license. He further submits that the impugned order itself amounts to cancelling the toddy license. The learned counsel further submitted that once the explanation is rejected, nothing remains on the file of the 1st respondent to consider in the final order of the cancellation and any order passed cancelling the license amounts to without considering the explanation of the petitioner. I am unable to accept the said contentions. Merely because the explanation of the petitioner has been rejected, it cannot be said that there is no explanation filed which is available on the file of the

1st respondent. But, however, I am of the opinion that the method and manner followed by the 1st respondent is not in accordance with Section 31(1) of the A.P.Excise Act, 1968 and he cannot reject the explanation by one proceeding and followed by another order cancelling the licensing of the toddy shop. Therefore, I am of the opinion that it is a matter to be looked into by the Commissioner of Prohibition and Excise for giving suitable and necessary training and instructions to the licensing authority in passing orders under Section 31(1) of the A.P.Excise Act, 1968 and also take appropriate proceedings against the 1st respondent in passing such orders which are not in accordance with Section 31(1) of the A.P.Excise Act, 1968. As final order has not been filed, I am not inclined to interfere with the said order, as admittedly, at the time of inspection the toddy was found adulterated with Chloral Hydrate and the second bottle of sample sent to the Government Chemical Examiner was also found adulterated with Chloral Hydrate, and whether A1 is a member of the society or not and without knowledge of the petitioner's society whether any toddy was sold in the premises of the toddy shop of the petitioner, is a matter to be decided by the licensing authority and pass appropriate final orders, giving sufficient reasons.

Accordingly, the Writ Petition is disposed of, directing the

1st respondent to pass final orders, taking into consideration the explanation of the petitioner dated 08.12.2005, in accordance with law. No order as to costs.

V.ESWARAIAH,J

Dated: 26.12.2005

Dsr

Note:

Mark a copy to the Commissioner of

Prohibition and Excise, A.P. at Hyderabad

Note:

Issue CC in two days

B/o

Dsr